



Office of the City Manager

CONSENT CALENDAR

December 13, 2011

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, Interim City Manager

Submitted by: Donna Corbeil, Director of Library Services

Subject: Lease Agreement: 2547 8<sup>th</sup> Street

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the Library to execute a 15 month lease agreement with two 2 month options with Dagovitz 05 Trust, Melvin Dagovitz, Trustee, (leasing agent West Coast Property Management) for real property located at 2547 8<sup>th</sup> Street, unit 12-A to house the tool lending library program during the construction phase of the South Branch Library, for the expected period extending from January 18, 2012 through July 31, 2013.

FISCAL IMPACTS OF RECOMMENDATION

The offered lease rate at 2547 8<sup>th</sup> Street is \$1.00/sf amounting to \$2850 monthly with an increase after the first 12 months by a CPI adjustment factor (minimum 3 %). On an annual basis the lease expense is \$34,200, while over the committed 15-month term the cost will not exceed \$50,000. Each of the subsequent two 2-month option periods will cost \$5700 and are intended to provide operational flexibility in the event of construction delays or move-in requirements. PG&E utility expenses are included in the lease (units are not separately metered) and parking is available on the street and in the lot across the street for no additional charge. Anticipated operational expenses include telephone, internet data line, and security alarm installation and service.

Funding for the building lease for FY 2012 in the amount of \$17,100 is provisioned through a transfer of monies from facility maintenance to the following account:

*Library Tax Fund: 301-9307-450.50-10 (Rental of Land/Buildings) 10LB25 (South Branch and TLL)*

CURRENT SITUATION AND ITS EFFECTS

The South Branch Library project will go out to bid before the end of the calendar year, whereupon following Council approval and execution of a contract the construction phase will begin. The Library's staff will prepare for the temporary closure in advance of the start date. If a temporary Tool Lending Library is to be established adequate time is needed to prepare the temporary site and complete any layout and interior improvements so that the collection can be moved and operations established in a timely manner. An Administrative Use Permit application has been submitted

(Application #11-20000134) and is under review by the Planning & Development Department, Land Use Planning Division, to secure required approvals for operation out of this location.

*At a regular meeting of the Board of Library Trustees on November 9, 2011 under Resolution No. R11-083 the board recommended the City Council grant authorization to execute a lease agreement to address library service needs during the construction of the South Branch library. The resolution was approved by vote: Ayes – Moore, Burton, Franklin, Holcomb, Novosel; Noes – none.*

## BACKGROUND

In November 2008 voters approved Measure FF, a Library bond measure to renovate, expand and make seismic and access improvements at the four neighborhood branch libraries. Much progress has been made on this effort with the North Branch and Claremont Branch in the construction phase. The following two projects, South and West are scheduled to enter the bid solicitation phase at the end of 2011, with contract execution and construction commencing in the first quarter of 2012.

At the June 9, 2010 Board of Library Trustees meeting, the board by Resolution No.: 10-50 approved the purchase of a customized book van. This came after much consideration of alternative service models as the most flexible and effective means to provide temporary library services during the branch closures for construction. The BookVan is currently operational, providing scheduled stops in the neighborhoods affected by the North Branch and Claremont Branch closures. A similar pattern of operation is anticipated upon the closure of the West and South branch libraries.

Given the unique service and materials provided by the Tool Lending Library, the BookVan would not be an effective means of delivery. In addition, the tool program serves all of the Berkeley community and BookVan service is limited to neighborhood areas impacted by a local branch closure. Recognizing these issues the board has opted to consider a temporary leased site from which to operate so as to mitigate the negative impact of the loss of this valuable resource and library service during the South Branch construction phase. No changes to the scope or hours of service are anticipated.

Staff has undertaken a search of area resources utilizing a list of desirable criteria.

- Size (square footage) and price
- Location (South Berkeley is preferred)
- Amenities of the space / building (i.e. restroom, utilities, etc.)
- Accessibility
- Safety and security (for patrons, staff and the collection)
- Parking availability
- Move-in ready
- Available the dates and period of time we need
- Meets zoning / permit requirements
- Terms of lease and conditions acceptable to the city / library

The recommended location, commonly known as the Sawtooth Building, located at 2547 Eighth street, unit 12A Berkeley, CA 94710, is the suite previously occupied by the

Center for Accessible Technology, and will meet the operational and service needs of the Library.

RATIONALE FOR RECOMMENDATION

The Berkeley Tool Lending Library is a unique service serving the residents and property owners of Berkeley. There are no alternative locations in library facilities in which to house and operate the program, therefore if a temporary location is not secured this service will not be available for a period of 15 to 19 months, during the construction of the South Branch library. The library board has identified funding for the lease and no additional operational costs are expected as a result of this decision. The alternative is to suspend the program and store the material until the new library is opened.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions have been considered.

CONTACT PERSON

Donna Corbeil, Berkeley Public Library, 981-6195

Attachments

1. Ordinance  
Exhibit A: Proposed Lease Agreement
2. BOLT Resolution

ORDINANCE NO. ##,###-N.S.

AUTHORIZING THE LIBRARY TO EXECUTE A 15 MONTH LEASE WITH TWO 2-MONTH EXTENSIONS WITH DAGOVITZ 05 TRUST, MELVIN DAGOVITA, TRUSTEE FOR REAL PROPERTY LOCATED AT 2547 8<sup>th</sup> STREET, UNIT 12A, TO HOUSE THE TOOL LENDING LIBRARY PROGRAM DURING THE CONSTRUCTION PHASE OF THE SOUTH BRANCH LIBRARY, FOR THE EXPECTED PERIOD EXTENDING FROM JANUARY 18, 2012 THROUGH JULY 31, 2013.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Council finds as follows:

- a. The Berkeley Public Library South Branch will close for construction in 2012, the Tool Lending Library housed at this location will be required to close or relocate for the duration of the construction period. The Library board wishes to continue the program during this period and following a search for sites is recommending the one they feel will best meet the library's needs.
- b. The proposed terms are to lease 2,850 rentable square feet at 2547 8<sup>th</sup> Street, unit 12-A at \$1.00/square foot, amounting to \$2850 monthly with an increase after the first 12 months by a CPI adjustment factor (minimum 3 %).

Section 2. The Library is hereby authorized to enter into a 15-month lease agreement and any necessary amendments with the option for two (2) two-month extensions with Dagovitz 05 Trust, Melvin Dagovitz, Trustee / Owner, of real property located at 2547 8<sup>th</sup> Street. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibit:

- A. Proposed lease for 2547 8<sup>th</sup> Street, Unit # 12-A

**NONRESIDENTIAL LEASE AGREEMENT**

Commercial, Industrial or Office

DATE: November 8, 2011, at Berkeley, California*Items left blank or unchecked are not applicable.***1. FACTS:**

- 1.1. The Landlord Dagovitz 05 Trust, Melvin Dagovitz, Trustee leases to City of Berkeley – Berkeley Public Library, Tenant the real estate referred to as 2547 Eighth Street, # 12-A, CA 94710.
- 1.2. The Landlord acknowledges receipt of \$ 5,700.00 to be applied as follows:
- |  |                    |  |                    |
|--|--------------------|--|--------------------|
| <input checked="" type="checkbox"/> Security deposit | \$ <u>2,850.00</u> | <input checked="" type="checkbox"/> First month's rent | \$ <u>2,850.00</u> |
| <input type="checkbox"/> Last month's rent           | \$ _____           |  |                    |
- 1.3. The following checked addendums are made as part of this nonresidential lease:
- |  |   |
|--|---|
| <input type="checkbox"/> Additional terms addendum [ft Form 250] | <input checked="" type="checkbox"/> Option to Renew/Extend [ft Form 565]      |
| <input type="checkbox"/> Authority to Sublease/Assign            | <input type="checkbox"/> Property Description                                 |
| <input type="checkbox"/> Brokerage Fee Addendum [ft Form 273]    | <input type="checkbox"/> Option to Buy [ft Form 161]                          |
| <input type="checkbox"/> Condition of Premises [ft Form 560]     | <input type="checkbox"/> Option to Lease Additional Space                     |
| <input type="checkbox"/> Building rules                          | <input type="checkbox"/> Plat of leased space                                 |
| <input type="checkbox"/> Operating Expense Sheet [ft Form 562]   | <input checked="" type="checkbox"/> Other: <u>City of Berkeley provisions</u> |

**2. TERM OF LEASE:**

- 2.1. The lease commences January 1, 2012, and expires March 30, 2013 the month of commencement being the anniversary month.
- 2.2. The lease terminates on the last day of the term without further notice.
- 2.3. If Tenant holds over, Tenant to be liable for damages at the daily rate of \$ 125.00

**3. RENT:**

- 3.1. Tenant to pay rent monthly, in advance, on the first day of each month, including rent for any partial month prorated at 1/30<sup>th</sup> of the monthly rent per day.
- 3.2. ☐ Monthly rent for the entire term is fixed at the amount of \$ N/A
- 3.3. ☐ Monthly rent, from year to year, is adjusted on each anniversary month as follows: Initial year's monthly rent: \$ N/A, and
- |   |               |
|---|---------------|
| a. _____% increase in monthly rent over prior year's monthly rent; or |               |
| b. First anniversary monthly rent:                                    | \$ <u>N/A</u> |
| c. Second anniversary monthly rent:                                   | \$ <u>N/A</u> |
| d. Third anniversary monthly rent:                                    | \$ <u>N/A</u> |
| e. Fourth anniversary monthly rent:                                   | \$ <u>N/A</u> |
- 3.4. ☒ Monthly base rent for the initial 12 months of the term is the amount of \$ 2,850.00, adjusted annually on the first day of each anniversary month by increasing the initial monthly base rent by the percentage increase between the applicable CPI-U index figures published for the third month preceding the month of commencement and the third month preceding the anniversary month.
- a. The applicable CPI-U Index (Consumer Price Index for All Urban Consumer)(1982-1984 = 100) is:

☐ Los Angeles-Anaheim-Riverside      ☒ San Francisco-Oakland-San Jose  
☐ San Diego      ☐ National      ☐ Other: No more than 5% no less than 3%. If the CPI is less than 3% the increase will be 3%.

- b. Rent increases under CPI-U adjustments are limited for any one year to an increase of N/A%.
- c. On any anniversary adjustment, should the CPI-U have decreased below the CPI-U for the prior twelve-month period, the monthly rent for the ensuing 12 months shall remain the same as the rent during the prior 12 months.
- d. If the CPI-U is changed or replaced by the United States Government, the conversion factor published by the Government on the new Index shall be used to compute annual adjustments.
- 3.5. Additional percentage rent equal to N/A % of gross sales made from the premises during each calendar year, less credit for other rent, real estate taxes, insurance and common area maintenance (CAM) charge paid for the calendar year.
  - a. The percentage rent shall be computed and paid for each month of the lease with a signed written statement of the gross income and percentage computation by the tenth day of the following month.
  - b. The additional percentage rent to be payable monthly shall be credited for other rent, taxes, insurance, and CAMs paid by Tenant for the month.
  - c. Within one month after each calendar year and on expiration of the lease, Tenant shall compute and deliver a written statement of sales and the percentage rent due for the calendar year, less credit for rent, taxes, insurance and CAMs paid for the calendar year, to annually adjust the percentage rent remaining due from Tenant or to be refunded to Tenant by Landlord, which difference will be paid on delivery of the annual statement.
  - d. Gross sales includes all money or equivalent received by Tenant, subtenant, licensees or concessionaires, in the ordinary course of business, whether wholesale or retail, cash or credit, less credit for goods returned by customer or merchandise returned by Tenant or transferred to tenant-affiliated stores.
  - e. Landlord has the right, on reasonable notice, to audit Tenant's books regarding sales information.
- 3.6. ☐ Every N/A years after commencement, including extensions/renewals, the monthly base rent will be adjusted, upward only, to current market rental rates for comparable premises, and computation of any future CPI-U adjustments will treat the year of each current market adjustment as a commencement year for selecting the Index figures.
  - a. The monthly rent during any year shall not be less than the previous year's monthly rent.
  - b. Landlord to reasonably determine and advise Tenant of the adjusted rental rates prior to three months before the adjustment becomes effective.
- 3.7. Rent to be paid in United States dollars by ☐ cash, or ☒ check, or ☐ cashier's check, at Landlord's address.
- 3.8. Rent to be tendered by ☒ mail or ☒ personal delivery
- 3.9. Tenant to pay a late charge of \$ 50.00 in the event rent is not received within five days of the due date.
- 3.10. Tenant to pay \$ 50.00 for each rent check returned for insufficient funds, and thereafter to pay rent by cash or cashier's check.

#### 4. OPERATING EXPENSES:

- 4.1. Tenant is responsible for payment of utility and service charge as follows: None. Electricity when and if landlord separately meters each unit.
- 4.2. Landlord is responsible for payment of utility and service charge as follows: Water, garbage, and electricity.
- 4.3. Tenant to pay all taxes levied on Tenant's trade fixtures installed on the premises.
- 4.4. Should Landlord pay any charge owed by Tenant, Tenant shall pay, within 10 days of written demand, the charge as additional rent.
- 4.5. As additional rent, Tenant to pay 0% of all real property taxes and assessments levied by governments, for whatever cause, against the land, trees and building containing the leased premises, within 30 days

after written computation and demand from Landlord.

- 4.6. As additional monthly rent, Tenant to pay 0% of the common area maintenance (CAM) incurred each month, within 10 days of written statement and demand for payment.
- Common area maintenance is the cost of maintaining and operating the "Common Areas," including all sidewalks, corridors, plazas, hallways, restrooms, parking areas, interior and exterior walls and all other open areas not occupied by tenants.
  - Common area maintenance includes "all charges" for garbage removal, janitorial services, gardening, landscaping, printing/decorating, repair and upkeep, utilities and other operating costs, including charges for property management of the common area maintenance.

## **5. POSSESSION:**

- 5.1. Tenant may terminate the lease if Landlord does not deliver up possession within 10 days after commencement of the lease.
- 5.2. Landlord is to recover and deliver possession of the premises from the previous tenant. Tenant will not be liable for rent until possession is delivered.
- 5.3. If Landlord is unable to deliver possession of the premises, Landlord will not be liable for any damages.

## **6. USE OF THE PREMISES:**

- 6.1. The Tenant's use of the premises shall be: Tool Lending Library.
- 6.2. No other use of the premises is permitted. Tenant may not conduct any activity which increases Landlord's insurance premiums.
- 6.3. Tenant will not use the premises for any unlawful purpose, violate any government ordinance or building and tenant association rules, or create any nuisance.
- 6.4. Tenant shall deliver up the premises together with all keys to the premises on expiration of the lease in as good condition as when Tenant took possession, except for reasonable wear and tear.

## **7. APPURTENANCES:**

- 7.1. Tenant shall have the right to use Landlord's access of ingress and egress.
- 7.2. Tenant shall also have the use of N/A parking spaces for the running of its business.

## **8. SIGNS AND ADVERTISING:**

- 8.1. Tenant will not construct any sign or other advertising on the premises without the prior consent of Landlord. Landlord's consent will not be unreasonably withheld.
- 8.2. Landlord will maintain a directory in the lobby of the premises displaying the name and suite number of Tenant. Landlord has the right to determine the size, shape, color, style and lettering of the directory.
- 8.3. Landlord will provide a sign to be placed on the primary door to Tenant's suite. The fees for the cost and installation will be paid by Tenant.

## **9. TENANT IMPROVEMENTS/ALTERATIONS:**

- 9.1. Tenant may not alter or improve the real estate without landlord's prior consent. Tenant will keep the real estate free of all claims for any improvements and will timely notify Landlord to permit posting of notices for nonresponsibility.
- 9.2. Any increases in Landlord's property taxes caused by improvements made by Tenant shall become additional rent due on demand.

## **10. REPAIR AND MAINTENANCE:**

- 10.1. The premises are in good condition, except as noted in an addendum.
- 10.2. Tenant shall maintain and repair the premises, except for the following which are Landlord's responsibility:

☒ Plumbing and sewers   ☒ Structural foundations   ☒ Exterior walls   ☒ Heating and air conditioning  
☒ Store front   ☒ Plate glass   ☒ Roof   ☒ Parking areas   ☒ Lawns and shrubbery   ☒ Sidewalks  
☒ Driveways/right of ways   ☒ Electrical   ☒ Other: lobby unless it is N/A

**11. RIGHT TO ENTER:**

Tenant agrees to make the premises available on 24 hours notice for entry by Landlord for necessary repairs, alterations, or inspection of the premises.

**12. NOTICES:**

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this lease and deposits it with the U.S. Postal Service, registered mail, postage prepaid. For purposes of this lease, notices shall be addressed as follows, as appropriate:

To Landlord:    Melvin Dagovitz Real Estate Investments  
                         1527 Fifth Avenue  
                         San Rafael, CA 94901

To the Tenant:   Director of Library Services  
                         Berkeley Public Library  
                         2090 Kittredge Street  
                         Berkeley, CA 94704

**13. WASTE:**

Tenant will not destroy, damage, or remove any part of the premises or equipment, or commit waste, or permit any person to do so.

**14. PESTICIDES:**

All use of pesticides on the premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

**15. LIABILITY INSURANCE:**

15.1. Tenant shall obtain and maintain commercial general liability and plate glass insurance covering both personal injury and property damage to cover Tenant's use of the premises insuring Tenant and Landlord.

15.2. Tenant shall obtain insurance for this purpose in the minimum amount of \$One Million.

15.3. Tenant shall provide Landlord with a Certificate of Insurance naming the landlord as an additional insured. The Certificate shall provide for written notice to Landlord should a change or cancellation of the policy occur.

15.4. Each party waives all insurance subrogation rights it may have.

**16. FIRE INSURANCE:**

16.1. Tenant shall obtain and maintain a standard fire insurance policy with extended coverage for theft and vandalism to the extent of 100% of the replacement value of all personal property and the restoration of Tenant improvements.

**17. HOLD HARMLESS:**

17.1. Tenant shall hold Landlord harmless for all claims, damages or liability arising out of the premises caused by Tenant or its employees or patrons.

**18. DESTRUCTION:**



- 18.1. In the event the premises are totally or partially destroyed, Tenant agrees to repair the premises if the destruction is caused by Tenant.
- 18.2. The lease shall not be terminated due to any destruction. If the premises are totally or partially destroyed from any cause, rendering the premises total or partially inaccessible or unusable, Landlord may elect to terminate this lease or continue this lease in effect by giving notice to Tenant within thirty (30) days of the date of destruction. If Landlord elects to continue this lease in full force and effect, then Landlord shall restore the premises and the rent shall be abated from the date of destruction until the date restoration is completed, in an amount proportionate to the extent to which the destruction interferes with Tenant's use of the premises. If Landlord fails to give notice of its decision to terminate or continue this lease within the period stated, Tenant may elect to terminate this lease. Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the premises.
- 18.3. Landlord shall repair the premises if the cause is not covered by the tenant's insurance and is covered by Landlord's policy.
- 18.4. Landlord may terminate the lease if the repairs cannot be completed within 30 days, the cost of restoration exceeds 70% of the replacement value of the premises, the insurance proceeds are insufficient to cover the actual cost of the repairs, or the premises may not be occupied by law.

**19. SUBORDINATION:**

- 19.1. Tenant agrees to subordinate to any new financing secured by the premises which does not exceed 80% loan-to-value ratio, interest of two percent over market and not less than a 15-year monthly amortization and five-year due date.

**20. TENANT ESTOPPEL CERTIFICATES:**

- 20.1. Within 10 days, after notice, Tenant will execute a certificate stating the existing terms of the lease to be provided to prospective buyers or lenders.
- 20.2. Failure to deliver the certificate shall be conclusive evidence the information contained in it is correct

**21. ASSIGNMENT, SUBLETTING AND ENCUMBRANCE: [Check only one]**

- 21.1. ☒ Tenant may not assign this lease or sublet any part of the premises, or further encumber the leasehold.
- 21.2. ☐ Tenant may not transfer any interest in the premises without prior consent of Landlord.  
a. ☐ Consent is subject to attached conditions. [ ]
- 21.3. ☒ Unconsented-to transfers of any interest in the lease terminate the lease.

**22. SURRENDER:**

Tenant may surrender this lease only by a written notice. At the termination of this lease, Tenant shall: 1) give up and surrender the premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the premises and which is owned and was installed by Tenant during the term of this lease.

**23. EMINENT DOMAIN:**

- 23.1. Should a portion or all of the premises be condemned for public use, Landlord may terminate the lease and Tenant's possession. If the lease is not terminated, Tenant shall receive a rent abatement for the actual reduction (if any) in the value of the lease.
- 23.2. Tenant waives the right to any compensation awarded from the condemning authority for the whole or partial taking of the premises.
- 23.3. Any Tenant's damages shall come solely from the condemning authority.

**24. WAIVER:**

Waiver of a breach of any provision in this lease shall not constitute a waiver of any subsequent breach. Landlord's receipt of rent with knowledge of Tenant's breach does not waive Landlord's right to enforce the breach.

**25. DEFAULT REMEDIES:**

25.1. If Tenant breaches any provision of this lease, Landlord may exercise its rights, including the right to collect future rental losses after forfeiture of possession.

**26. BROKERAGE FEES:**

26.1. ☐ Landlord, ☐ Tenant, to pay \$ N/A to Broker: N/A

**27. MISCELLANEOUS:**

27.1. ☒ See attached addendum for additional terms.

27.2. In any action to enforce this agreement, the prevailing party shall receive attorney fees.

27.3. This lease shall be binding on all heirs, assigns and successors except as provided in section 19.

27.4. This lease shall be enforced under California law.

27.5. This lease reflects the entire agreement between the parties.

27.6. ☐ This lease is secured by a trust deed. [ft Form 451]N/A

27.7. ☐ The performance of this lease is assured by a guarantee agreement. [ft Form 439]N/A

<p>I agree to let on the terms stated above.</p> <p>Date: _____, 20____</p> <p>Landlord: <u>Dagotvitz 05 Trust</u></p> <p>Signature: _____</p> <p>Address: _____</p> <p>_____</p> <p>Phone: _____ Fax: _____</p> <p>E-mail: _____</p>	<p>I agree to occupy on the terms stated above.</p> <p>Date: _____, 20____</p> <p>Tenant: <u>City of Berkeley</u></p> <p>Signature: _____</p> <p>Address: _____</p> <p>_____</p> <p>Phone: _____ Fax: _____</p> <p>E-mail: _____</p>
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**1. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

a. If Landlord provides any aid, service or benefit to others on the City's behalf, Landlord shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Landlord shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.

b. If Landlord is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Landlord shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Landlord. All Landlord's activities must be in accordance with these laws, ordinances, codes, and regulations, and Landlord shall be solely responsible for complying therewith.

**2. CITY NON-DISCRIMINATION ORDINANCE**

Landlord agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Landlord agrees as follows:

a. The Landlord shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. The Landlord shall permit the City access to records of employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision, and will, in addition, fill-out in a timely fashion, forms supplied by the Landlord to monitor these non-discrimination provisions.

**3. NUCLEAR FREE BERKELEY**

Landlord agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**4. OPPRESSIVE STATES**

a. In accordance with Resolution No. 59,853-N.S., Landlord certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

c. Landlord's failure to comply with this section shall constitute a default of this lease..

## **5. BERKELEY LIVING WAGE ORDINANCE**

a. Landlord agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Landlord employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Landlord will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

b. Landlord shall be required to maintain all reasonable records and documents that would establish whether Landlord is subject to Berkeley's Living Wage Ordinance (LWO). If Landlord is subject to the LWO, as defined therein, Landlord shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Landlord for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default.

c. If Landlord is subject to the LWO, Landlord shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Landlord enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased property.

d. If Landlord fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease.

time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Landlord's breach.

**6. BERKELEY EQUAL BENEFITS ORDINANCE**

a. Landlord hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Landlord is currently subject to the Berkeley Equal Benefits Ordinance, Landlord will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

b. If Landlord is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Landlord agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default.

c. If Landlord fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Landlord's failure to comply with this Section shall constitute default of the lease.



**BERKELEY PUBLIC LIBRARY  
BOARD OF LIBRARY TRUSTEES**

Attachment 2

**RESOLUTION NO.: R11-083**

**REQUEST CITY COUNCIL AUTHORIZES THE DIRECTOR OF LIBRARY SERVICES TO EXECUTE A LEASE FOR SPACE AT 2547 8<sup>TH</sup> STREET FOR A 15 MONTH PERIOD WITH TWO 2-MONTH EXTENSIONS FOR AN EXPECTED PERIOD EXTENDING FROM JANUARY 1, 2012 THROUGH JULY 31, 2013.**

WHEREAS, in November 2008 voters approved Measure FF; and

WHEREAS, the North Branch Library and Claremont Branch Library are in the construction phase with completion scheduled for first quarter 2012; and

WHEREAS, the West Branch and South Branch Library are expected to close for construction in early 2012;

WHEREAS, the Library Board has authorized the purchase and operation of a BookVan to provide temporary service to neighborhoods during the branch closures; and

WHEREAS, the Tool Lending Library is a unique service, serving residents citywide, with operational needs not appropriate to the BookVan; and

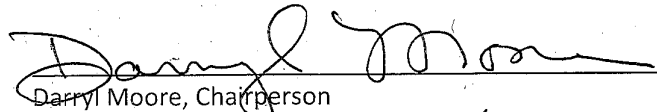
WHEREAS, staff has undertaken a search of available community resources, including the leasing of commercial real estate to identify a location meeting operational benchmarks; and

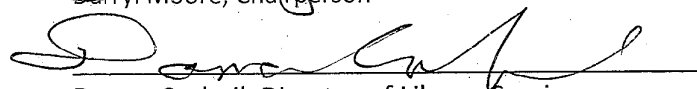
WHEREAS, property has been identified that will fully meet the criteria established.

NOW, THEREFORE, BE IT RESOLVED that the Board of Library Trustees of the City of Berkeley hereby recommends the City Council of the City of Berkeley approve the execution of a lease agreement for real property at 2547 8<sup>th</sup> Street for Library operations.

ADOPTED by the Board of Library Trustees of the City of Berkeley at a regular meeting held on November 9, 2011 by the following vote:

AYES:	Trustees Burton, Franklin, Holcomb, Moore & Novosel
NOES:	None
ABSENT:	None
ABSTENTIONS:	None

  
Darryl Moore, Chairperson

  
Donna Corbeil, Director of Library Services  
Serving as Secretary to the Board of Library Trustees